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Subject: INVOCATION OF THE *EMERGENCIES ACT* AND RELATED MEASURES

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Overview: This document contains background information on the *Emergencies Act*, the Financial Transactions and Reports Analysis Centre of Canada, and Crowdfunding platforms, as well as suggested questions for members.

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INTRODUCTION

On 18 February 2022, the House of Commons Standing Committee on Finance passed a motion to, among other things:

[...] undertake an emergency study on the invocation of the [*Emergencies Act*](#) and related measures taken regarding the 2022 Freedom Convoy, and that:

a) The study examine:

- i. the financing of the protest an[d] the blockades;
- ii. The broadened scope of Canada's anti-terrorist financing laws;
- iii. The federal government's increased ability to interfere with the business of crowdfunding websites; including but not limited to new Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) regulations with which crowdfunding websites must comply;
- iv. The ability of Canadian financial institutions to temporarily and selectively cease providing financial services to specific clients;
- v. broadly the increased powers given to Canadian financial institutions to share personal information on anyone suspected of involvement with the 2022 Freedom Convoy;
- vi. The long-term impacts of these measures on individual Canadians' financial futures;
- vii. Any other issue or topic related to the extension of powers or their effect on the Canadian financial system by the invocation of the Emergency Measures Act on February 14, 2022;

EMERGENCIES ACT

A. BACKGROUND

[An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof](#), R.S.C., 1985, c. 22 (4th Supp.) was enacted in 1988 (the *Emergencies Act*, pursuant to the short title in section 1).

According to the preamble, the *Emergencies Act* authorizes the “Governor in Council ... subject to the supervision of Parliament, to take special temporary measures that may not be appropriate in normal times” which nonetheless remain “subject [namely] to the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*.”

Section 3 of the *Emergencies Act* defines a “national emergency” as

an urgent and critical situation of a temporary nature that

(a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or

(b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada

and that cannot be effectively dealt with under any other law of Canada.

The first four parts provide and define the types of emergencies contemplated by the *Emergencies Act*, namely: a Public Welfare Emergency (Part I), a Public Order Emergency (Part II), an International Emergency (Part III), and a War Emergency (Part IV).

B. PROCLAMATION OF A STATE OF EMERGENCY

On 15 February 2022, the Governor in Council proclaimed a [public order emergency](#) under Part II of the *Emergencies Act*, pursuant to section 17 (the Proclamation).

Pursuant to section 18, and subject to the other provisions of the *Emergencies Act*, the Proclamation is effective on the day on which it is issued and it “expires at the end of thirty days unless the declaration is previously revoked or continued.”

A public order emergency is defined as “an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency;”¹

Section 17(2) of the *Emergencies Act* provides the content of the declaration of public order emergency, namely:

- a concise description of what constitutes the emergency;
- the special temporary measures that the Governor in Council anticipates may be necessary for dealing with the emergency; and
- the area of Canada to which the effects of the emergency extend, when they do not extend to the whole of Canada.

The Proclamation describes the public order emergency as:

(a) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada,

¹ Section 16 of [An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof](#), R.S.C., 1985, c. 22 (4th Supp.) (the *Emergencies Act*).

- (b) the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings,
- (c) the adverse effects resulting from the impacts of the blockades on Canada's relationship with its trading partners, including the United States, that are detrimental to the interests of Canada,
- (d) the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number, and
- (e) the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians.

The temporary measures anticipated by the Governor in Council, as detailed in the Proclamation, are:

- (a) measures to regulate or prohibit any public assembly — other than lawful advocacy, protest or dissent — that may reasonably be expected to lead to a breach of the peace, or the travel to, from or within any specified area, to regulate or prohibit the use of specified property, including goods to be used with respect to a blockade, and to designate and secure protected places, including critical infrastructure,
- (b) measures to authorize or direct any person to render essential services of a type that the person is competent to provide, including services related to removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade anywhere in Canada, to relieve the impacts of the blockades on Canada's public and economic safety, including measures to identify those essential services and the persons competent to render them and the provision of reasonable compensation in respect of services so rendered,
- (c) measures to authorize or direct any person to render essential services to relieve the impacts of the blockade, including to regulate or prohibit the use of property to fund or support the blockade, to require any crowdfunding platform and payment processor to report certain transactions to the Financial Transactions and Reports Analysis Centre of Canada and to require any financial service provider to determine whether they have in their possession or control property that belongs to a person who participates in the blockade,
- (d) measures to authorize the Royal Canadian Mounted Police to enforce municipal and provincial laws by means of incorporation by reference,
- (e) the imposition of fines or imprisonment for contravention of any order or regulation made under section 19 of the *Emergencies Act*; and
- (f) other temporary measures authorized under section 19 of the *Emergencies Act* that are not yet known.

Additionally, once the declaration of a public order emergency is in effect, the Governor in Council may make the following orders or regulations, subject to certain conditions and restrictions:

- (a) the regulation or prohibition of
 - (i) any public assembly that may reasonably be expected to lead to a breach of the peace,
 - (ii) travel to, from or within any specified area, or
 - (iii) the use of specified property;
- (b) the designation and securing of protected places;
- (c) the assumption of the control, and the restoration and maintenance, of public utilities and services;
- (d) the authorization of or direction to any person, or any person of a class of persons, to render essential services of a type that that person, or a person of that class, is competent to provide and the provision of reasonable compensation in respect of services so rendered; and
- (e) the imposition
 - (i) on summary conviction, of a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both that fine and imprisonment, or
 - (ii) on indictment, of a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both that fine and imprisonment,for contravention of any order or regulation made under this section.²

On 15 February 2022, the Governor in Council made [*Emergency Measures Regulations*](#), on the basis that “the Governor in Council believes on reasonable grounds, that the regulation or prohibition of public assemblies in the areas referred to in these Regulations are necessary.”

On 15 February 2022, the Governor in council also made [*Emergency Economic Measures Order*](#), (the Order) on the basis that “the Governor in Council has reasonable grounds to believe that the measures with respect to property referred to in this Order are necessary.”

The Order namely provides a list of entities in section 3 (the entities) that must cease

- (a) dealing in any property, wherever situated, that is owned, held or controlled, directly or indirectly, by a designated person or by a person acting on behalf of or at the direction of that designated person;
- (b) facilitating any transaction related to a dealing referred to in paragraph (a);
- (c) making available any property, including funds or virtual currency, to or for the benefit of a designated person or to a person acting on behalf of or at the direction of a designated person; or

² Section 19 of the *Emergencies Act*.

(d) providing any financial or related services to or for the benefit of any designated person or acquire any such services from or for the benefit of any such person or entity.³

A “designated person” is defined as “any individual or entity that is engaged, directly or indirectly, in an activity prohibited by sections 2 to 5 of the *Emergency Measures Regulations*.”⁴

The Order also provides that “[a] Government of Canada, provincial or territorial institution may disclose information to [an] entity [...] if the disclosing institution is satisfied that the disclosure will contribute to the application of this Order.”⁵

C. PARLIAMENTARY SUPERVISION

Part VI of the *Emergencies Act*, titled “Parliamentary Supervision” namely provides the following parliamentary supervision mechanisms.

Section 58(1) of the *Emergencies Act* provides that

a motion for confirmation of a declaration of emergency, signed by a minister of the Crown, together with an explanation of the reasons for issuing the declaration and a report on any consultation with the lieutenant governors in council of the provinces with respect to the declaration, shall be laid before each House of Parliament within seven sitting days after the declaration is issued.

Such a motion, along with documents related to the declaration, was tabled in the House of Commons by Mr. Mendicino, Minister of Public Safety, on 16 February 2022.⁶

Additionally, pursuant to section 61(1) of the *Emergencies Act*, “every order or regulation made by the Governor in Council pursuant to this Act shall be laid before each House of Parliament within two sitting days after it is made.”

Pursuant to section 62(1) of the *Emergencies Act*, “a committee of both Houses of Parliament designated or established for that purpose” (the Parliamentary Review Committee) must review “[t]he exercise of powers and the performance of duties and functions pursuant to a declaration of emergency.”⁷

³ Section 2(1) of the Order.

⁴ Section 1 of the Order.

⁵ Section 6 of the Order.

⁶ House of Commons, [Journals](#), 16 February 2022.

⁷ For more information on the history of this measure, see Peter Bernhardt and Michael Dewing, “[4.2.2 The Emergencies Act](#),” *Parliamentary Committee Review of Regulations*, Library of Parliament, Publication No. 2005-63-E, 18 December 2008.

Meetings of the Parliamentary Review Committee are to be held in camera⁸ and every member of the Parliamentary Review Committee as well as “every person employed in the work of the Committee shall take the oath of secrecy set out in the [*Emergencies Act*] schedule.”⁹

An inquiry must also be caused to be held by the Governor in Council “within sixty days after the expiration or revocation of a declaration of emergency” on “the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency.”¹⁰

THE FINANCIAL TRANSACTIONS AND REPORTS ANALYSIS CENTRE OF CANADA

Established by the [*Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act*](#) (the Act) and its regulations, the FINTRAC is Canada’s financial intelligence unit. It collects finance intelligence and enforces compliance of reporting entities with the legislation and regulations. FINTRAC acts as a unique partner in Canada’s anti–money laundering and anti–terrorist financing regime (the Regime) that is led by the Department of Finance. FINTRAC is established as a financial intelligence agency independent from the law enforcement agencies and has no investigative powers. It is authorized to share financial intelligence with law enforcement agencies and other departments. Within Canada’s regime, FINTRAC undertakes the following:

- receives financial transaction reports and voluntary information in accordance with the legislation and regulations;
- safeguards personal information under its control;
- ensures compliance of reporting entities with the legislation and regulations;
- maintains a registry of money services businesses in Canada;
- produces financial intelligence relevant to investigations of money laundering, terrorist activity financing and threats to the security of Canada;
- researches and analyzes data from a variety of information sources that shed light on trends and patterns in money laundering and terrorist activity financing; and
- enhances public awareness and understanding of money laundering and terrorist activity financing.

FINTRAC defines terrorist financing as the act of providing funds for terrorist activity. This may involve funds raised from legitimate sources such as donations from individuals, businesses and/or charitable

⁸ Section 62(4) of the *Emergencies Act*.

⁹ Section 62(3) of the *Emergencies Act*.

¹⁰ Section 63(1) of the *Emergencies Act*.

organizations that are otherwise operating legally. Or it may involve funds from criminal sources such as the drug trade, the smuggling of weapons and other goods, fraud, kidnapping and extortion.¹¹

Under section 4(1) of the 15 February 2022 [Emergency Economic Measures Order: SOR/2022-22](#), additional entities are required to register with FINTRAC if they are in possession or control of property that is owned, held or controlled by or on behalf of a “designated person,” defined as those “engaged, directly or indirectly, in an activity prohibited by [sections 2 to 5](#) of the *Emergency Measures Regulations*.” In general, a “designated person” is one that participates in a public assembly that disrupts trade, critical infrastructure, and/or supports the threat or use of acts of serious violence.

The additional entities required to register with FINTRAC are the following:

- entities that provide a platform to raise funds or virtual currency through donations; and
- entities that perform any of the following payment functions:
 - the provision or maintenance of an account that, in relation to an electronic funds transfer, is held on behalf of one or more end users,
 - the holding of funds on behalf of an end user until they are withdrawn by the end user or transferred to another individual or entity,
 - the initiation of an electronic funds transfer at the request of an end user,
 - the authorization of an electronic funds transfer or the transmission, reception or facilitation of an instruction in relation to an electronic funds transfer, or
 - the provision of clearing or settlement services.

According to the 15 February 2022 [news release](#) of the Department of Finance, these entities will now be required to [report suspicious](#) or [large value transactions](#) to FINTRAC.

GOFUNDME’S BUSINESS MODEL AND TERMS OF SERVICE

GoFundMe is a crowdfunding platform. Its [terms of service](#) state that GoFundMe is not a broker, financial institution, creditor or charity and that it is simply an “administrative platform” that enables fundraisers to connect to donors. This means GoFundMe does not process donors’ financial transactions and it appears that it is not among the entities required under [section 5 of the *Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act*](#) (PCMLTFA) to report suspicious transactions to Canada’s financial intelligence agency, the Financial Transactions and Report Analysis Centre of Canada (FINTRAC). Rather, GoFundMe’s third-party [payment processors](#) would be captured by this PCMLTFA provision.

¹¹ A terrorist activity financing offence is an offence under section [83.02](#), [83.03](#) or [83.04](#) of the *Criminal Code* or an offence under [section 83.12](#) arising out of a contravention of section [83.08](#) (Freezing of Property). “Terrorist activity” is defined in section [83.01\(1\)](#) of the *Criminal Code*.

Term 8 of GoFundMe’s terms of service prohibits

[u]ser [c]ontent that reflects or promotes behavior that we deem, in our sole discretion, to be an abuse of power or in support of hate, violence, harassment, bullying, discrimination, terrorism, or intolerance of any kind relating to race, ethnicity, national origin, religious affiliation, sexual orientation, sex, gender, gender identity, gender expression, serious disabilities or diseases.

It was Term 8 that GoFundMe cited when it determined the Freedom Convoy 2022 fundraiser to be in violation of its terms of service.

Initially, GoFundMe blocked the release of funds raised in the Freedom Convoy campaign by its Canadian organizers, Tamarra Lich and B. J. Dichter. On 27 January 2022, however, the company announced its [release of \\$1 million](#), saying it had done so because the “organizers provided a clear distribution plan [...] and confirmed funds would be used only for participants who traveled to Ottawa to participate in a peaceful protest.”

However, on 4 February 2022, eight days after the truck convoy’s arrival in Ottawa, GoFundMe [announced](#) that it was cancelling the fundraiser outright because “we now have evidence from law enforcement that the previously peaceful demonstration has become an occupation, with police reports of violence and other unlawful activity.” By that point, the fundraiser had attracted some \$10 million in donations from Canadian and, possibly, foreign donors. Some of these donations were made anonymously because GoFundMe’s terms of service permit such actions. It should be noted, however, that GoFundMe’s payment processors would have full access to the personal information of donors.

While GoFundMe had initially planned to “work with organizers to send all remaining funds to credible and established charities chosen by the Freedom Convoy 2022 organizers and verified by GoFundMe,” on 5 February 2022, it announced that funds would instead be returned directly to all donors.

Another Canadian academic, Jennifer Robson, has [observed](#) that incorporation as a non-profit requires selection of a bank to handle the corporation’s finances as well as the hiring of an accountant. Both banks and accountants have reporting requirements under the PCMLTFA.

Having been deplatformed by GoFundMe, Lich and Dichter pivoted to alternative crowd-funding platforms, including United States-based Christian platform, GiveSendGo. Their GiveSendGo campaign is [reported](#) to have raised \$1.4 million of its \$16-million target. GiveSendGo has more than one fundraising campaign associated with the Freedom Convoy. One, called Freedom Convoy to DC 2022, references the truck convoy in Canada but [states](#) its aim is to raise C\$250,000 to replicate a similar “movement” against the U.S. federal government in Washington, D.C. As of 8 February 2022, the campaign had generated C\$85,930.

Of note, in a 3 February 2022 [news conference](#), Lich announced the 30 January 2022 incorporation of a not-for-profit organization – Freedom 2022 Human Rights and Freedoms – possibly to satisfy GoFundMe requirements. Lich indicated that lawyers with the [Justice Centre for Constitutional Freedoms](#) assisted the incorporation. According to a Substack publication written by former FINTRAC analyst, Jessica M. Davis, Lich and Dichter are not the named directors of the newly formed non-profit. Davis’s analysis of publicly

available information indicates that all fundraising for the truck convoy is now being received by this new non-profit. In comments made on social media, Davis [notes](#) that “on the ground, operational, [*sic*] financing is happening through direct email money transfers and probably other mechanisms.”

REQUIREMENTS FOR FINANCIAL INSTITUTIONS

Following the coming into force of the [Emergency Economic Measures Order](#) (EEMO) banks, credit unions, insurance companies, trust and loan companies, crowdfunding platforms and other financial services providers are required to, among other things :

- Temporarily cease providing any financial or related services when they suspect that an account is being used by, on behalf or for the benefit of any person engaged, directly or indirectly, in prohibited activities set out under sections 2 to 5 of the [Emergency Measures Regulations](#);¹²
- Must determine on a continuing basis whether they are in possession or control of property that is owned, held or controlled by or on behalf of these persons; and
- Disclose without delay the existence of any such property, or information about a transaction in respect of that property to the Royal Canadian Mounted Police or the Canadian Security Intelligence Service.

The EEMO also allows a federal, provincial or territorial institution to share information to any financial service provider subject to the Order if it is satisfied that it would contribute to the application of the Order.

Lastly, the EEMO provides that no proceedings under the *Emergencies Act* and no civil proceedings lie against a financial service provider for complying with the Order.

SUGGESTED QUESTIONS

1. How are financial service providers expected to determine who, among their clients, are engaged in in activities prohibited by the *Emergency Measures Regulations* if such information is not disclosed to them by federal, provincial or territorial authorities?
2. What would be the consequences of failing to comply with the new requirements contained in the Order for a financial service provider subject to the it?
3. What is the scope of the requirement to cease providing financial services to designated persons? For example, would a bank be required to cease providing services in respect of all the accounts of such a person, including mortgage accounts or joint accounts shared with their spouse?
4. What would be the consequences for a person whose vehicle insurance policy gets cancelled or suspended? What could be the consequences if the vehicle is involved in an accident while the

¹² This requirement does not apply in respect of an insurance policy that was valid prior the coming into force of these measures, except an insurance policy on a vehicle involved in blockades.

policy is cancelled or suspended? Would the person still be required to pay premiums for this policy?

5. What is the scope of the immunity provided under the *Emergency Economic Measures Order*? Would a financial service provider that mistakenly cease providing services to a person that is not engaged in activities prohibited by the *Emergency Measures Regulations* be provided immunity against proceedings from such a person?
6. What would be the recourse mechanisms for individuals who would like to contest the freezing of their bank accounts?

